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## Attorneys for the Representatives and the Settlement Class

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT P. CRAWFORD II, as Personal Representative to the Estate of GAIL HAHN, CHAILLE DUNCAN, and ALEXIS HERNANDEZ, individually and on behalf of all other similarly situated California Residents,

Case No. 3:12-cv-00153-DMS-BGS

**JOINT NOTICE OF DISMISSAL  
WITHOUT PREJUDICE OF “CURRENT  
MEMBER” CLAIMS**

## Plaintiffs,

V.

**MASSAGE ENVY FRANCHISING,  
LLC, a Delaware Limited Liability  
Company,**

## Defendant.

1       The parties hereto, by and through their respective counsel of record, hereby  
2 stipulate and agree as follows:

3           WHEREAS, in connection with an earlier proposed class action settlement in  
4 this case (the “Original Settlement”),<sup>1</sup> Robert P. Crawford, as Personal  
5 Representative to the Estate of Gail Hahn, Alexis Hernandez and Chaille Duncan  
6 (collectively the “Representatives”) filed a Second Amended Complaint (the “SAC”)  
7 against Defendant Massage Envy Franchising, LLC (“MEF” collectively the  
8 “Parties”);

9           WHEREAS, the SAC was deemed filed by the Court’s March 6, 2015 Order  
10 preliminarily approving the Original Settlement. Dkt. No. 303, at p. 19:1-3;

11          WHEREAS, the SAC asserts nationwide claims on behalf of “SAC Members”  
12 which includes “Former Members” as well as all “Current Members” of MEF  
13 Franchises;

14          WHEREAS, the Parties have reached an agreement (the “Amended Settlement  
15 Agreement”) resolving all of the claims and causes of action asserted in this case on  
16 behalf of Former Members pled in the SAC;

17          WHEREAS, as a material term of the Amended Settlement Agreement, the  
18 Parties have agreed to dismiss the claims of “Current Members” from the  
19 Representatives’ SAC:

20           NOW THEREFORE, the Parties, by and through their respective counsel,  
21 hereby stipulate that all claims and causes of action of the “Current Members” as  
22 pled in the SAC be dismissed pursuant to Fed. R. Civil. P. 41(a)(1) without  
23 prejudice.

24           Fed. R. Civ. P. 41(a)(1)(A)(ii) allows a plaintiff to voluntarily dismiss an  
25 action without court order by filing a stipulation of dismissal signed by all parties  
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27           

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<sup>1</sup> Unless otherwise noted, capitalized terms have the same meaning as the Amended Settlement  
28 Agreement.

1 who have appeared. See *Duke Energy Trading & Mktg. v. Davis*, 267 F.3d 1042,  
 2 1049 (9th Cir. 2001) (noting that voluntary dismissal under Rule 41(a)(1)(A)  
 3 “requires no action on the part of the court”).

4 Rule 41(a)(1)(A) is expressly subject to the provisions of Fed. R. Civ. P. 23(e),  
 5 which was modified in 2003 to eliminate any requirement for Court approval or  
 6 notice to the putative class when a class representative voluntarily dismisses class  
 7 allegations without prejudice before a ruling on class certification:

8       Rule 23(e)(1)(A) resolves the ambiguity in former Rule  
 9 23(e)’s reference to dismissal or compromise of “a class  
 10 action.” That language could be—and at times was—read  
 11 to require court approval of settlements with putative class  
 12 representatives that resolved only individual claims.  
 13 [Citation.] The new rule requires approval only if the  
 14 claims, issues, or defenses of a certified class are resolved  
 15 by a settlement, voluntary dismissal, or compromise.  
 16 Subdivision (e)(1)(B) carries forward the notice  
 17 requirement of present Rule 23(e) when the settlement  
 binds the class through claim or issue preclusion; notice is  
not required when the settlement binds only the individual  
 class representatives.

18 Committee Notes on Rules—2003 Amendment (emphasis added); *see also*  
 19 *Jackson v. Innovative Sec. Servs., LLC*, 283 F.R.D. 13, 15 (D.D.C. 2012) (“The  
 20 purpose of Rule 23(e) is to protect the rights of nonparty members of the class...  
 21 However, this matter was never certified pursuant to Rule 23(b)(2). As such,  
 22 plaintiffs’ request for dismissal of the class action claim is appropriate under  
 23 Federal Rule 41(a)(1).”); *Wynn v. Nat'l Broad. Co.*, No. CV00-11248-SVW(RZX),  
 24 2002 WL 31681865, at \*1 (C.D. Cal. Mar. 6, 2002) (dismissing action under Rule  
 25 41(a)(1)(A) and ruling over defendant’s objection that “no approval is required by  
 26 the Court pursuant to Rule 23(e), since there is no certified class action at this  
 27 point”). Accordingly, voluntary dismissal of the Current Members’ causes of  
 28 action does not require Court approval because they are not part of a certified class

1 at this time. *See* Dkt. 381, at p. 14:21-23 (decertifying class including Current  
2 Members).

3 Finally, even if Court approval were required, dismissal of the Current  
4 Members' causes of action will have no prejudicial effect. The dismissal without  
5 prejudice will have no preclusive effect on Current Members' claims, and the  
6 Current Members now assert causes of action on their own behalf in the related  
7 litigation, *Donna Zizian, Individually and on behalf of all other similarly situated*  
8 *California Residents, v. Massage Envy Franchising, LLC, a Delaware limited*  
9 *liability company*, Case No. 3:16-cv-00783-DMS (BGS).

10  
11 Date: June 3, 2016

Respectfully submitted,

12  
13 FINKELSTEIN & KRINSK LLP

14 By: /s/ Jeffrey R. Krinsk

15 Jeffrey R. Krinsk, Esq.  
16 William R. Restis, Esq.  
17 Trenton R. Kashima, Esq.  
David J. Harris, Esq.

18 Attorneys for Plaintiffs and  
the Settlement Class

19  
20 SACKS, RICKETTS & CASE, LLP

21 By: /s/Cynthia A. Ricketts

22 Luanne Sacks  
Cynthia A. Ricketts

23  
24 Attorneys for Defendant  
Massage Envy Franchising, LLC

## SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Cindy Ricketts, counsel for MEF, and that I have obtained Ms. Ricketts' authorization to affix her electronic signature to this document.

Dated: June 3, 2016

By: /s/ Jeffrey R. Krinsk

Jeffrey R. Krinsk, Esq.